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By SKaiser on 4-20-20
In response to 2020-002702

Inter Office Memo

DATE: July 14, 1992

SUBJECT: U.S.S. Lead RCRA Status

FROM: June Wiaz, SAB

TO: Tom Beisswenger, OGC

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SITE ASSESSMENT SECTION

So that you can make a completely informed decision, Tom, I thought it might be useful for me to summarize the issues involved in the decision on whether to list U.S.S. Lead on the NPL. The decision hinges on several factors; bankruptcy, inability to pay, unwillingness, and (possibly) addressability of off-site contamination under RCRA.

Bankruptcy and Inability to Pay

At the time U.S.S. Lead was proposed to the NPL, its parent company, Sharon Steel was in the middle of Chapter 11 bankruptcy proceedings (which are continuing at the present time). Documentation to that effect was included in the documentation record. U.S.S. Lead has virtually no assets, and has not been operating or generating income since Oct. 1985. However, subsequent to proposal, the stock of U.S.S. Lead was transferred to Mining Remedial Recovery Co. (MRRC) -- a "dummy company" -- which is not in bankruptcy and has committed to a loan of \$2.5 million and indicated that additional funds would be available.

This raises at least two issues: First, if the parent company is deemed to be bankrupt, is the subsidiary corporation also considered bankrupt? Second, if the Agency determines that U.S.S. Lead is not bankrupt, it clearly has an inability to pay for the extensive remediation that will be required of it. Can the "inability to pay" criterion be incorporated into this decision? I refer you to the supporting documentation for the Tonolli Corp (attached). In its response to comments on the Tonolli site, the Agency makes the case that to make a precise determination of bankruptcy would require [consuming] further assets. The response cites the Eagle-Picher case to support the need for certainty against the need for expeditious response.

I also would cite August 9, 1988 (53 FR 30005) p. 41007, which states: "Sites are not included on the NPL if they are subject to RCRA corrective action authorities, and prompt cleanup appears likely." This is especially relevant given that this site is a top priority under the Region's Environmental Priorities Initiative, and was a factor in the Reg. 5 RCRA program decision to request that CERCLA address problems at the site. Of course, this is somewhat counter to our policy of exhausting administrative procedures under RCRA before listing a site on the NPL.

Callahan - I write this up really quickly last issue to summarize the HQ Atty. This is just FYI + info for Beisswenger of course. Ju

P.S. Please call if you have any to do in connection 202/260.

Unwillingness

While the facility most recently has been "minimally compliant," a chronology of activities at the site shows unresponsiveness and violations of state orders. Currently in effect is a partial interim agreed order (which sounds pretty darn tentative to me). Since the State of Indiana Department of Environmental Management does not have RCRA corrective action authority, it requested that Reg. 5 EPA issue a corrective action order. On the basis of the facility's perceived inability to pay for the extensive remediation necessary, the RCRA program referred the site to the CERCLA program. RCRA corrective action authorities have not been exhausted. But there possibly is another issue: offsite contamination.

Off-site Contamination

There is considerable contamination of sediments off-site. There may be contaminated soil as well; however, that was not scored. Perhaps the Region should consider scoring the soil exposure pathway, which is a good idea for a smelter facility. Such scoring may show extensive contaminated soils off-site. I have a call into Colleen Hart, the Site Assessment Manager, to discuss whether RCRA corrective action could address the off-site sediment, and possibly soil contamination.

As you stated in our June 25 conversation about this site, EPA is bound by its deferral policy unless there is some compelling reason to do otherwise. Because of the high priority of the site and possible off-site contamination not easily addressed under RCRA, there may be compelling reasons in this case to maintain the listing proposal.

Attached you will find the compliance history of the facility, as well as the Tonelli site (finalized in October 1989) support document. I will call you next week to talk about this (and Allied Chemical from Region 2).

Thanks for your review of these materials, Tom.

cc: Robert Myers
Allison Abernathy
Janet Grubbs